

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**  
**CRIMINAL REVISION APPLICATION No. 2 of 2003**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE BANKIM.N.MEHTA**

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1 Whether Reporters of Local Papers may be allowed  
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy  
of the judgment ?

4 Whether this case involves a substantial question  
of law as to the interpretation of the  
constitution of India, 1950 or any order made  
thereunder ?

5 Whether it is to be circulated to the civil  
judge ?

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**IBRAHIM ALARAKHYA SHAIKH & 1 - Applicant(s)**

**Versus**

**STATE OF GUJARAT - Respondent(s)**

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**Appearance :**

MR NALIN K THAKKER for Applicant(s) : 1 - 2.

MR KC SHAH APP for Respondent(s) : 1,

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**CORAM : HONOURABLE MR.JUSTICE BANKIM.N.MEHTA**

**Date : 03/12/2007**

**ORAL JUDGMENT :**

1. Petitioners have filed this Criminal  
Revision application under Section 397 read  
with Section 401 of the Code of Criminal

Procedure, 1973 (hereinafter referred to as 'the Cr. P.C.") and challenged the judgment and order passed by learned Sessions Judge, Kutch at Bhuj on 24-12-2002 in Criminal Appeal No.47 of 1995 whereby he dismissed the appeal and confirmed the judgment and order of conviction dated 21-12-1995 passed by learned Chief Judicial Magistrate, Kutch at Bhuj in Criminal Case No.341 of 1994.

2. On the basis of the complaint filed by Kanji Valji on 8-1-1994 before Bhuj City Police Station offence was registered as I -CR No.2 of 1994 for the offences punishable u/s 420-114 of the I.P. Code against the petitioners and one Jusab Ibrahim Shaikh. On completion of investigation charge sheet was laid for the aforesaid offences.

3. Learned Chief Judicial Magistrate, Kutch at Bhuj framed charge Exh.8 against the petitioners and said Jusab Ibrahimhai Shaikh. The accused denied the charge and claimed to be tried. Therefore, prosecution adduced evidence to prove the charge. On completion of recording of evidence trial Court explained the incriminating circumstances

appearing against the accused in the evidence. The accused explained the circumstances and denied having committed the offence in their further statement recorded u/s 313 of the Cr. P.C.

4. After hearing the learned A.P.P. and the learned advocate for the accused, the trial Court came to the conclusion that prosecution has proved charge levelled against the present petitioners and therefore convicted them and sentenced for offence punishable u/s 420 read with Section 114 of the I.P. Code but acquitted accused Jusab Ibrahim Shaikh.

5. Being aggrieved by the said decision, the convicts preferred Criminal Appeal No.47 of 1995 before the Sessions Court, Kutch at Bhuj. Criminal Appeal No.10 of 1996 was also preferred by a witness Ramdas Lakhamshi Soni from whom gold ingot was recovered. Both the appeals were heard together.

6. After hearing learned advocate for the appellant and learned A.P.P., learned Sessions Judge, Kutch at Bhuj dismissed Criminal

Appeal No.47 of 1995 filed by the convicts. Being aggrieved by the said decision, the petitioners have filed this criminal revision application.

7. I have heard learned advocate Mr. Nalin K. Thakkar for the petitioners and learned A.P.P. Mr. K.C. Shah for respondent - State at length and in great detail. I have also perused the record and proceedings of the trial court.

8. Learned advocate Mr. Thakkar for the petitioners submitted that complaint in respect of alleged offence was filed after about 1 month of the incident and there is no explanation with regard to delay caused in filing of the complaint. He submitted that there is no evidence to indicate recovery of gold ingot and that gold ingot was melted from stolen gold articles belonging to the complainant. He also submitted that learned trial Judge committed serious error in accepting the evidence with regard to recovery of muddamal articles as panchas have not supported the prosecution case nor the Investigation Officer is examined to prove

recovery of muddamal articles. He also submitted that no test identification parade is held and identification of the accused in the court is doubtful and therefore, trial Court as well as appellate court have committed serious error in appreciating the evidence and the impugned judgment is required to be set aside.

9. Learned A.P.P. Mr. K.C. Shah submitted that the High Court would be slow while exercising revisional powers when there are concurrent findings of two courts. He also submitted that the trial court very well appreciated the evidence and came to the conclusion that the petitioners were involved in the offence. Therefore, no interference is warranted in the impugned judgment and criminal revision application is required to be dismissed.

10. It is settled proposition that ordinarily it is not open for the High Court to interfere with the concurrent findings of the courts below specially by reappreciating the evidence in its revisional jurisdiction, Interference with the order passed by the

trial court is limited only to exceptional cases where it is found that the order under revision suffers from glaring illegality and has caused miscarriage of justice.

11. It appears that complainant lodged complaint Exh. 17 on 8-1-1994 for the alleged incident occurred on 7-12-1993. It appears from the complaint that petitioner Ibrahim Alarakha came at the petrol pump where the complainant was sitting and inquired about a road and left. Thereafter, petitioner Latif and other accused came there and informed the complainant that he was fortunate as petitioner Ibrahim gave Darshan as he was a holy-man. Thereafter, petitioner Ibrahim again came there and made a request to permit him to hit on the back. The complainant permitted petitioner Ibrahim to hit on his back. It is also alleged in the complaint that petitioner Ibrahim asked the complainant to give gold ring, gold chain and money. The complainant gave gold ring, gold chain and currency notes of Rs.552/- to petitioner Ibrahim who left asking the complainant to sit there. Thereafter as petitioner Ibrahim did not return the complainant informed Taufikbhai

about the incident and thereafter on reading the news-paper he went to lodge the complaint.

12. The prosecution examined complainant P.W.1 Kanjibhai Valji at Exh. 16. The witness reiterated the accusations levelled in complaint. It appears that alleged incident occurred near petrol pump which was in a busy locality in the broad day light but it was not witnessed by any one. It also appears from the evidence of this witness that he and P.W. 4 Taufikbhai Harun went to the police station after the incident, but no complaint was filed in respect of alleged incident. The witness also admitted that he did not give names of the accused at the time of lodging complaint and also admitted that he has good relations with P.W. 4 Taufikbhai. The evidence of this witness clearly indicates that the complaint was not lodged immediately after incident but it was lodged after about one month of the incident. The evidence also indicates that P.W. 4 Taufikbhai was not present at the time of alleged incident nor had seen the petitioners at any point of time prior to alleged incident. It is very significant that no independent witness has

been examined to prove incident. It is also strange that no test identification parade was held and the witness identified the petitioners in the court that too after about 1 ½ years of incident. It is difficult to believe that any one would give gold articles and money to a stranger on mere asking. It also appears from the complaint that the petitioner Ibrahim requested the complainant to hit. Whether any one would allow any one to hit without any reason ? The evidence of this witness is not convincing and reliable. Therefore, the learned trial Judge committed serious error in relying upon the evidence of the witness.

13. The prosecution examined panch witnesses; P.W. 2 Chenpuri and P.W. 3 Jafar to prove panchnama of recovery of muddamal article gold ingot. However, both panch witnesses have turned hostile and not supported the prosecution case.

14. The evidence of P.W. 6 Sarjitsinh indicates that muddamal ingot was recovered by P.S.I. Mr. Katara from Anjar village. However, Mr. Katara has not been examined by

the prosecution. It also appears that muddamal was recovered by drawing panchnama Exh. 19. The panchnama indicates that it was drawn at Bhuj City Police Station and the muddamal was produced by Ramdas Lakhamshi Soni of Bhuj. There is no evidence to indicate that the muddamal ingot was made from the gold ornaments belonging to the complainant.

15. The prosecution also examined P.W. 5 Ramdas Lakhamshi Soni at Exh. 23. The witness has turned hostile and not supported the prosecution case with regard to recovery of muddamal article. Therefore, the prosecution case that gold ornaments taken away from the complainant were melted and converted into gold ingot and it was recovered from P.W. 5 Ramdas Lakhamshi Soni, becomes doubtful. There is no evidence that muddamal article gold ingot was recovered from P.W. 5 Ramdas Lakhamshi. Therefore, learned trial Judge committed error in convicting the petitioners for the charge levelled against them.

16. Investigating Officer P.W. 6 Sarjitsinh Mansinh in his deposition recorded at Exh.24

has not thrown any light with regard to the case in respect of alleged offence. There is also no evidence to indicate that on what basis investigating agency came to know about muddamal article and recovered the same from P.W. 5 Ramdas Lakhamshi Soni. The evidence adduced by the prosecution does not appear to be cogent, reliable and convincing. Therefore, the trial court committed error in coming to the conclusion that the prosecution has proved the case beyond reasonable doubt. The findings recorded by the courts below have resulted into substantial miscarriage of justice and judgments rendered by the courts below are perverse and erroneous. Therefore, there are compelling reasons and circumstances for this Court to interfere with the findings recorded by the courts below and the judgment and order of conviction passed by the trial court and confirmed by the appellate court are required to be set aside.

17. In the result, this Criminal Revision Application is allowed and the judgment and order of conviction passed by Chief Judicial Magistrate, Kutch at Bhuj on 21-12-1995 in

Criminal Case No.341 of 1994 and confirmed by learned Sessions Judge, Kutch at Bhuj on 24-12-2002 in Criminal Appeal No.47 of 1995 are quashed and set aside. The petitioners are acquitted for the charge levelled against them. The petitioners are on bail. Their bail bond stands cancelled. Rule is made absolute.

(Bankim N. Mehta, J.)

/JVSatwara/